

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

Robert Moss, individually and as general guardian of his minor child;)	
)	
Ellen Tillett, individually and as general guardian of her minor child; and)	
)	
Freedom From Religion Foundation, Inc., a Wisconsin non-profit corporation,)	
)	
Plaintiffs,)	
v.)	Case No. 7:09-cv-1586-HMH
)	
Spartanburg County School District No. 7,)	
)	
Defendant.)	

**DEFENDANT’S RESPONSE TO PLAINTIFFS’ MOTION FOR LEAVE
TO FILE AND SERVE SURREPLY MEMORANDUM**

The School District opposes Plaintiffs’ motion for leave to file a surreply brief, which is not contemplated by this Court’s rules. *See* Local Civil Rule 7.07 DSC. The issues have been more than adequately addressed in the six briefs already filed.¹ That is especially true of the proposed surreply’s attempt to distinguish *Lanner v. Wimmer*, 662 F.2d 1349 (10th Cir. 1981), which Plaintiffs chose not to brief earlier despite ample opportunity to do so. *See* Dkt. 19 (Mem. EC) 26, 27, 28, 29, 32 (citing *Lanner*); Dkt. 30 (Opp. EC) (Plaintiffs fail to cite *Lanner*); Dkt. 32 (Reply EC) 9, 10, 11 (citing *Lanner*).

Contrary to Plaintiffs’ assertion, Dkt. 36 at ii [sic], the School District did not use the Equal Protection briefing to raise the issue of whether “giving academic credit for [released time reli-

¹ The School District would welcome the opportunity to argue the pending motions to the Court, should the Court deem that helpful. *See* Local Civil Rule 7.08 DSC.

gious instruction] violates the Establishment Clause”—Plaintiffs did. *See* Dkt. 34 (EP Opp.) at 2.

The School District also notes that the briefing has been bifurcated solely because Plaintiffs twice amended their complaint to add additional claims in response to the School District’s first motion to dismiss. Plaintiffs cannot argue that the bifurcation they caused precludes the School District from responding to an Establishment Clause issue *Plaintiffs* raised in the Equal Protection briefing. Nor does the fact that the School District did respond suddenly give Plaintiffs the right to file a surreply, especially when Local Civil Rule 7.07 DSC provides no such right.

The School District respectfully requests that Plaintiffs’ motion be denied.

Respectfully Submitted,

/s/Kenneth E. Darr, Jr.

Kenneth E. Darr, Jr. (Fed. I.D. #989)

Lyles, Darr & Clark, LLP

104 N. Daniel Morgan Ave., Suite 300

Spartanburg, South Carolina 29306

kdarr@ldclaw.com

Telephone: (864) 585-4806

Facsimile: (864) 585-4810

Eric C. Rassbach (admitted *pro hac vice*)

Lori H. Windham (admitted *pro hac vice*)

The Becket Fund for Religious Liberty

1350 Connecticut Ave., NW, Suite 605

Washington, DC 20036

erassbach@becketfund.org

lwindham@becketfund.org

Telephone: (202) 955-0095

Facsimile: (202) 955-0090

Attorneys for Defendant

Spartanburg County School District No. 7

December 8, 2009

Spartanburg, South Carolina